

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

MAY 9, 2001

IN RE:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

DOCKET NO. 00-00523

ORDER DENYING BELL SOUTH'S PETITION FOR APPEAL AND AFFIRMING THE
INITIAL ORDER OF HEARING OFFICER

This matter came before the Tennessee Regulatory Authority (the "Authority" or the "TRA") at a regularly scheduled Authority Conference held on February 21, 2001 for consideration of the Petition for Appeal (the "Petition") filed by BellSouth Telecommunications, Inc. ("BellSouth") on January 16, 2001. In its Petition, BellSouth requested the Authority to reject the Initial Order of the Hearing Officer (the "Initial Order") issued on December 29, 2000.¹ After reviewing the Order, BellSouth's Petition, and the record in this matter, the Directors voted unanimously to deny BellSouth's Petition and to affirm the Hearing Officer's Initial Order, attached as Exhibit A.

Background

Since 1984, the independent local exchange carriers' (the "Rural Carriers") compensation for intraLATA toll calls has been handled in Tennessee through an intraLATA toll settlement

¹ Initial Order of Hearing Officer for the Purpose of Addressing the Authority's Jurisdiction over IntraLATA Toll Settlement Agreements between BellSouth Telecommunications, Inc. and Independent Incumbent Local Exchange Carriers, Authority Docket No. 00-00523, December 29, 2000.

process administered by BellSouth. Each Rural Carrier collects certain traffic information and bills its customers for intraLATA toll calls at BellSouth's toll rates. In turn, BellSouth compensates each LEC for the billing and collection of intraLATA toll revenues and for the local switching and transport of intraLATA toll traffic.

Every month there is a settlement process where BellSouth determines how much is due from the Rural Carriers in intraLATA toll revenues and how much it owes to the Rural Carriers in compensation for billing and collection and for local switching and transport of intraLATA toll calls. After processing this information, BellSouth provides each Rural Carrier with a monthly settlement statement that identifies either the amount BellSouth owes the Rural Carrier (if the Rural Carrier's compensation exceeds intraLATA toll revenues) or the amount the Rural Carrier owes BellSouth (if intraLATA toll revenues exceeds the Rural Carrier's compensation).

Originally, the amount of intraLATA toll revenues billed and collected by the Rural Carriers was designed to offset the Rural Carriers' compensation. In other words, BellSouth's intraLATA toll rates and the Rural Carriers' rates for billing and collection and for local switching and transport were nearly equal to one another. Any excess intraLATA toll revenues were shared among the Rural Carriers on a per-access-line basis.

Over time, however, BellSouth's intraLATA toll rates were reduced through regulatory proceedings. Because at the time BellSouth was rate-of-return regulated and was earning more than its authorized fair rate of return, the Tennessee Public Service Commission (the "TPSC") ordered certain reductions in BellSouth's toll rates² in an effort to reduce its revenues so that the targeted fair rate of return for BellSouth would be achieved.

Notwithstanding these reductions in BellSouth's intraLATA toll revenues, corresponding

² The reduction in toll rates was also applicable to the Rural Carriers' customers.

reductions in the Rural Carriers' compensation rates were not ordered since the Rural Carriers' were also rate-of-return regulated and, for that reason, needed the revenues generated from the toll settlements in order to achieve their targeted fair rates of return. Hence, there was created the present arrangement in which the Rural Carriers generally receive net payments from BellSouth each month due to this disparity between the Rural Carriers' compensation rates and BellSouth's toll rates. These "make whole" arrangements between BellSouth and the Rural Carriers were established by the TPSC as part of the rate design phase of BellSouth's earnings investigations.

On July 31, 2000, BellSouth provided the LECs with written notice that it was terminating the current intraLATA toll settlement arrangement and that BellSouth would no longer operate under the current agreements after December 31, 2000.

The Rural Universal Service Docket

At the regularly scheduled Authority Conference held on June 20, 2000, the Directors voted unanimously to establish a Rural Universal Service Docket and appointed Director Melvin J. Malone to serve as Hearing Officer for the purpose of preparing this matter for consideration by the Directors.³ The Authority granted intervention in this docket to all rural companies which had intervened in the Authority's Universal Service Docket, Authority Docket No. 97-00888,⁴

³ See *Order Opening Docket for Purpose of Addressing Rural Universal Service and Appointing Hearing Officer*, Authority Docket No. 00-00523, July 14, 2000.

⁴ The Rural Carriers are represented by the Rural Independent Coalition (the "Coalition"). The Coalition comprises Ardmore Telephone Cooperative; Ben Lomand Rural Telephone Cooperative, Inc.; Bledsoe Telephone Cooperative; CenturyTel of Adamsville, Inc.; CenturyTel of Clairborne, Inc.; CenturyTel of Ooltewah-Collegedale, Inc.; Concord Telephone Exchange, Inc.; Crockett Telephone Company, Inc.; Dekalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.; Humphreys County Telephone Company; Loretto Telephone Company, Inc.; North Central Telephone Cooperative, Inc.; Peoples Telephone Company; Tellico Telephone Company, Inc.; Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation; United Telephone Company; West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative.

Intervention has since been granted to the following, in addition to the Rural Carriers: The Southeastern Competitive Carriers Association (SECCA), BellSouth, AT&T Communications of the South Central States, Inc. (AT&T), TimeWarner Telecom of the Mid-South, L.P., and MCI WorldCom, Sprint Communications Company, L.P., Verizon Wireless, Inc. ("Verizon"), the Consumer Advocate Division of the Attorney General and Reporter (the "Consumer Advocate"), and Alltel Communications, Inc.

and sought comments on the applicability of the issues in that docket to universal service for rural areas. The Authority also requested that BellSouth notify the Authority of any future changes in the intraLATA toll settlement arrangement.

Pursuant to the Authority's request, BellSouth filed a letter with the Authority on June 26, 2000 concerning toll settlement agreements between BellSouth and the Rural Carriers. BellSouth informed the Authority that it was negotiating certain modifications to the current intraLATA toll settlement agreements. BellSouth also called to the Authority's attention certain provisions in the agreements which purport to allow either party to terminate the agreements with proper notice.

On August 4, 2000, BellSouth responded to the Authority's request, notifying the Authority that it was exercising its right to terminate unilaterally the existing intraLATA toll settlement agreements; copies of the letters to this effect which it had sent to the Rural Carriers on July 31, 2000 were also provided to the Authority.

Pursuant to a Notice issued on July 21, 2000, the Rural Independent Coalition (the "Coalition"), which represents the Rural Carriers, filed comments on September 5, 2000. The Coalition requested that the Authority "direct BellSouth to maintain the existing arrangements between BellSouth and the Independents with respect to intraLATA toll until the matters before the Authority in this proceeding are resolved."⁵ In its Reply Comments filed on September 19, 2000, BellSouth countered that the settlement agreements "were entered into outside of any regulatory proceeding, . . . are not subject to any specific standards or rules set by the Authority . . . and . . . have not been submitted in the past to the Authority for approval."⁶

⁵ Comments of the Rural Independent Coalition, Authority Docket No. 00-00523, September 5, 2000, pp. 29-30.

⁶ Reply Comments of BellSouth, Authority Docket No. 00-00523, September 19, 2000, p. 3.

Pursuant to a Notice issued on October 19, 2000, a Status Conference was held in this matter on October 31, 2000. Following the Status Conference, on November 8, 2000, the Hearing Officer issued a Report and Recommendation which, among other things, directed the parties to file responses by November 16, 2000 on three legal issues.⁷ The first of these legal issues is:

Does the TRA have jurisdiction over the toll settlement agreements between BellSouth and the Rural Exchange Carriers?

The Initial Order

In the Initial Order, issued on December 29, 2000, the Hearing Officer concludes that the Authority has jurisdiction and authority over the intraLATA toll settlement arrangement embodied within the toll settlement agreements. The Hearing Officer distinguishes between “the provisions agreed to by and between the parties themselves, absent regulatory influence or mandate” and “provisions that exist pursuant to regulatory edict and *must* be complied with until the TRA, consistent with state law, declares otherwise.”⁸ Contradicting BellSouth’s argument that the TRA would be impermissibly interfering with its private contractual rights,⁹ the Hearing Officer states that it is not necessary to find that the TRA must assert authority over BellSouth’s private contractual rights in order to conclude that the TRA has jurisdiction and authority over the toll settlement arrangement. The Hearing Officer concludes “that, as a matter of law, the TRA’s jurisdiction and authority over the toll settlement *arrangement* memorialized within the toll settlement agreements remains intact, notwithstanding BellSouth’s actions terminating these agreements as of December 31, 2000.”¹⁰ In other words, the Hearing Officer states, parties

⁷ Briefs were filed by SECCA, AT&T, BellSouth, the Coalition, the Consumer Advocate, and Verizon.

⁸ *Initial Order*, p. 10.

⁹ See Initial Brief of BellSouth Telecommunications, Inc. on Legal Issues, Authority Docket No. 00-00523, November 9, 2000, pp. 2-4.

¹⁰ *Initial Order*, p. 10.

cannot avoid the TRA's authority through the terms of private contracts. To illustrate the support in statutory and case law for the general regulatory authority of the TRA, the Hearing Officer cites *Consumer Advocate Division, Office of the Attorney General v. Greer*, 967 S.W.2d 759, 761-62 (Tenn. 1998), in which the Tennessee Supreme Court stated:

[T]he General Assembly has charged the TRA with the "general supervisory and regulatory power, jurisdiction and control over all public utilities." Tenn. Code Ann. § 65-4-104 (1997 Supp.). In fact, the Legislature has explicitly directed that the statutory provisions relating the authority of the TRA shall be given "a liberal construction" and has mandated that "any doubts as to the existence of a power conferred on the [TRA]... shall be resolved in favor of the existence of the power, to the end that the [TRA] may effectively govern and control the public utilities placed under its jurisdiction..." Tenn. Code Ann. § 65-4-106 (1997 Supp.). The General Assembly, therefore, has "signaled its clear intent to vest in the [TRA] practically plenary authority over the utilities within its jurisdiction." *Tennessee Cable Television Ass'n v. Tennessee Public Service Comm'n*, 844 S.W.2d 151, 159 (Tenn. App. 1992).¹¹

Having concluded that the TRA has jurisdiction and authority over the toll settlement arrangement, the Hearing Officer adds:

[N]othing stated herein should be construed to suggest that current efforts in developing or pursuing alternative interconnection compensation mechanisms should be relaxed, or that this decision extends beyond resolving the immediate question of the TRA's jurisdiction and authority in this matter.¹²

The Initial Order enjoins BellSouth "from taking any measures to unilaterally terminate the existing intraLATA toll settlement arrangement/mechanism currently in effect between BellSouth and the Rural Carriers."¹³

BellSouth's Petition

BellSouth filed its Petition on January 16, 2001. In its Petition, BellSouth argues that the TRA does not have jurisdiction over the toll settlement arrangement and that freezing

¹¹ *Initial Order*, p. 11.

¹² *Id.*, pp. 12-13.

¹³ *Id.*, p. 13.

compensation levels is contrary to price cap regulation. BellSouth states that the toll settlement arrangement “was designed by agreement between BellSouth and [the rural] carriers; it was not ordered by the TRA (or its predecessor regulatory body), nor was it entered into pursuant to any specific Tennessee law that dictated the form of the arrangement.”¹⁴ BellSouth acknowledges the distinction the Initial Order makes between “the arrangements” and “[t]he agreements themselves, which are essentially a matter of private contract.”¹⁵ BellSouth argues that “[e]ven assuming for the sake of argument that there is both a public interest component and a private contractual component to the contracts, BellSouth believes that the Initial Order has set the dividing line between these two components at the wrong place.”¹⁶ BellSouth argues that if a public interest aspect exists, it can only be found in the “provisions that are in place whereby end-users served by the local carriers receive intraLATA toll service.”¹⁷ If there were any threat of disruption of this service, the TRA “would be empowered to step in to prevent that disruption, pursuant to the statutory authority that is detailed on page 11 of the Initial Order,”¹⁸ or in other words pursuant to *Greer* and the statutes cited therein. But this is not the case, BellSouth argues—“there is no question but that the physical arrangements whereby end-user/customers receive intralata toll service will remain in place.”¹⁹

The “private” aspect of the agreements, in BellSouth’s view, is the “compensation mechanism” that exists between BellSouth and the Rural Carriers, particularly the rates and the alleged contractual right of BellSouth to terminate the agreements and negotiate new rates.²⁰ BellSouth then states:

¹⁴ Petition, January 16, 2001, pp. 1-2.

¹⁵ *Id.*

¹⁶ *Id.*, p. 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, p. 4.

²⁰ *Id.*

However, a review of the Order shows that it is only this “private” part of the contract that has ever been subject to involvement by the TRA or its predecessor. The Order notes as the only instance of a past regulatory involvement, the PSC’s approval of BellSouth’s rates, which were based on this arrangement at a time when BellSouth was under rate of return regulation. As the Order specifically acknowledges, however, the PSC’s oversight arose from the requirements of rate of return regulation, and BellSouth is no longer subject to that particular regulatory scheme. Thus, any authority the Tennessee PSC may once have exercised over the compensation component of these agreements as a function of rate making is no longer available to the TRA under the current statutory form of regulation.

The Initial Order appears to reach the contrary conclusion, i.e. that having once approved the arrangement as a part of rate making, the Authority retains jurisdiction even under the current form of regulation. The fallacy of this approach is that it fails to acknowledge that the statutes have changed, and that the authority over rate making, which was the only justification for past oversight of the compensation agreement, has changed as well. BellSouth submits that, under the current regulatory scheme, the issue of compensation for this traffic exchange is one that should be determined solely by negotiations between the parties.²¹

Positions of SECCA, AT&T, the Rural Independent Coalition, and the Consumer Advocate

Pursuant to a Notice issued on January 17, 2001, the Southeastern Competitive Carriers Association (“SECCA”), AT&T Communications of the South Central States, Inc. (“AT&T”) , the Coalition, and the Consumer Advocate Division of the Attorney General and Reporter (the “Consumer Advocate”) submitted responses to BellSouth’s Petition to Appeal. Each agrees with the Initial Order’s finding that the TRA has authority and jurisdiction over the arrangement and that BellSouth’s status under price regulation does nothing to diminish this.

SECCA supports the Hearing Officer’s citation of several statutes giving the TRA jurisdiction over the arrangement. SECCA contends that the Authority’s jurisdiction is most explicitly provided in Tenn. Code Ann. § 65-4-124(a), which states “All telecommunications

²¹ Petition, January 16, 2001, pp. 4-5.

service providers shall provide non-discriminatory interconnection to their public network under reasonable terms and conditions.”²² SECCA asserts that:

The appeal filed by BellSouth, which makes no mention of [Tenn. Code Ann.] Section 124(a), is frivolous and merits no more than this short reply. There is no doubt of the TRA’s jurisdiction over the terms and conditions of interconnection among local exchange carriers.²³

AT&T demonstrates the jurisdiction of the Authority with a comparison to interLATA traffic. AT&T states that at divestiture no one questioned the power of the TPSC to create an access charge system to replace the then existing arrangements for interLATA traffic. There is, therefore, “no basis for questioning the TRA’s power to establish an appropriate arrangement replacing the terminated contracts between BellSouth and the Independents”²⁴ for intraLATA traffic.

AT&T further states that the language and intent of the price regulation statute, Tenn. Code Ann. § 65-5-209, does not include the intraLATA toll arrangement within the scope of price regulation, and that “[t]he TRA has the power to assure that the service continues and to determine an appropriate basis for compensation.”²⁵ BellSouth’s status as a price regulated company, therefore, does nothing to remove the intraLATA toll compensation mechanism from the jurisdiction of the Authority.

The Coalition contends that TRA review and approval of a new arrangement is what BellSouth seeks to avoid with its appeal. The Coalition elaborates:

The Independents are ready and willing to negotiate with BellSouth in an effort to reach mutually agreeable settlements arrangements and to present them to the

²² Response of the SECCA to BellSouth Telecommunications, Inc.’s Appeal, January 24, 2001, p. 1.

²³ *Id.*, p. 2.

²⁴ Reply of AT&T Communications of the South Central States, Inc. to Petition for Appeal of BellSouth Telecommunications, January 24, 2001, p. 2.

²⁵ *Id.*, p. 2.

TRA for approval in the context of the larger overhaul of the rural Universal Service mechanism in Tennessee.²⁶

The Consumer Advocate states in its reply that “BellSouth’s request lacks support in the record in this matter, which includes substantial testimony and legal briefs.”²⁷

Findings and Conclusions

In its Petition, BellSouth argues that the TRA lacks authority over the toll settlement agreements, which BellSouth argues are exclusively a matter of the private contractual relations between BellSouth and the independent companies. BellSouth contends that the TRA cannot prohibit BellSouth from terminating the agreements because to do so would impermissibly interfere with BellSouth’s private contractual rights. The Initial Order deals with this question by distinguishing between the agreements and the arrangement embodied in them. The Initial Order concludes that the TRA has jurisdiction and authority over the arrangement through its general supervisory and regulatory authority over public utilities. It is not necessary to interfere with the private aspects of the agreements, but the TRA may nevertheless exert its authority over the public interest aspects. Evidence that the TRA has jurisdiction and authority over the arrangement can be found in the fact that the TPSC ordered BellSouth to make the make whole payments, in other words to participate in the current toll settlement arrangement.

BellSouth attempts to dispute this conclusion in the following manner: The Initial Order separates the agreements, which it respects as the private contract rights of BellSouth, from the arrangement, over which it asserts authority. Yet the only evidence of TRA jurisdiction and authority over the agreements or the arrangement is the TPSC’s action ordering BellSouth to make the make whole payments, which the TPSC ordered as a means of keeping BellSouth’s

²⁶ Brief of the Rural Independent Coalition, January 24, 2001, p. 3.

²⁷ Reply of the Attorney General to BellSouth Telecommunications, Inc.’s Petition to Appeal, January 24, 2001.

revenues at a proper level. Significantly, the TPSC's action occurred under rate of return regulation. Since BellSouth is no longer under rate of return regulation, it follows that the TRA's jurisdiction and authority over the agreements, and therefore the arrangement, has been removed.

BellSouth seizes on the arrangement/agreement distinction and the Hearing Officer's reference to the TPSC's action to obscure the essential point made in the Initial Order, that the TRA has jurisdiction over the arrangement through its general regulatory authority, as stated in *Greer* and the statutes cited therein. The error in BellSouth's argument is evident in the following sentence: "The Initial Order appears to reach the contrary conclusion, i.e., that having once approved the arrangement as a part of rate making, the Authority retains jurisdiction even under the current form of regulation."²⁸ By turning the reference to prior TPSC action into the sole source, rather than just one indication, of the TRA's jurisdiction, BellSouth creates a straw man upon which it then focuses its attack. BellSouth overlooks the fact that the TRA has jurisdiction over the arrangement through its general supervisory and regulatory power, which exists independently of and in addition to any specific action by the TPSC or the TRA. BellSouth has not argued, and has certainly not demonstrated, that the TRA has waived this power as to the toll settlement arrangement, and, generally, BellSouth has not shown that the TRA's jurisdiction and authority are in any way restricted in this context.

As the Initial Order makes clear, BellSouth cannot rely on what it terms "private" contractual provisions to circumvent or avoid its regulatory obligations.²⁹ This is the key to the Initial Order's holding, and BellSouth has not offered anything to refute this position. Furthermore, BellSouth's conclusions as to the public interest aspect in this case are basically

²⁸ Petition, January 16, 2001, pp. 4-5.

²⁹ "It is well established that regulated utilities may not use contractual agreements as a mechanism for avoiding their regulatory obligations." *In re New Hampshire Electric Cooperative, Inc.*, New Hampshire Pub. Utils. Comm'n, October 1, 1990, 75 N.H.P.U.C. 649, citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).

flawed. The Authority certainly agrees with BellSouth that service to end-users is a public interest issue, but the Authority finds that the arrangement between BellSouth and the Rural Carriers, including the rates, has a definite public interest aspect, contrary to BellSouth's assertions. Much has been said already by the Rural Carriers themselves about the effects termination would have upon their ability to provide service,³⁰ and they have pursued preservation of the arrangement through the Rural Universal Service Docket based on this position. It should be noted here that the Initial Order takes no position on whether the toll settlement arrangement must be considered or acted upon in the Rural Universal Service Docket. This is legal issue No. 2 set forth in the November 8, 2000 Report and Recommendation,³¹ and it has not yet been taken up by the Hearing Officer. BellSouth, for its part, claims that the toll service will not be discontinued; all BellSouth says it wants to do is terminate the agreements and renegotiate the rates. Nevertheless, even if the only impact on actual service to end-users is indirect, i.e. the effect of renegotiated rates on the revenues of the Rural Carriers, the public interest implications of BellSouth's proposed actions are obvious, because these actions may in some instances affect the Rural Carriers' ability to provide service and may affect the competitive balance between the Rural Carriers and BellSouth.

Furthermore, the Authority disagrees specifically with BellSouth's argument that price regulation removes either the toll settlement arrangement or the parties' agreements from TRA control. The first point that should be made about BellSouth's price regulation argument is that it is cursory and unsupported by legal analysis. Because of its brevity, it seems to be based on a simple historical distinction, to the effect of "that was then, this is now." A more elaborate price

³⁰ See e.g. Comments of the Rural Independent Coalition, September 5, 2000.

³¹ "Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?" *Report and Recommendation of Pre-Hearing Officer*, Authority Docket No. 00-00523, November 8, 2000, Attachment 2.

regulation argument would make two points: First, the TPSC ordered the toll settlements arrangement as part of rate of return ratemaking; BellSouth is no longer subject to rate of return ratemaking, so the TRA's jurisdiction no longer has any basis. This argument is invalid because, as stated above, it ignores the overarching supervisory and regulatory power of the TRA, which survives a mere change in ratemaking format. Second, the argument runs, under rate of return regulation it was appropriate for the TPSC or the TRA to order a specific component of a company's rates to be changed, but under price regulation the specific components are exclusively the company's concern, subject to certain price cap restrictions and increases in basic service rates; the TRA can only order changes in overall rates if it determines that they exceed the company's price cap, which is based on a formula derived from the price regulation statute, Tenn. Code Ann. § 65-5-209. Once again BellSouth misstates the scope of the TRA's jurisdiction and authority, even in the realm of price regulation. The price regulation statute must be construed and implemented in relation to other statutory provisions, which include the TRA's obligation to ensure that interconnection provisions are non-discriminatory (Tenn. Code Ann. § 65-4-124), do not inhibit competition (Tenn. Code Ann. § 65-4-123), and do not diminish the provision of universal service (Tenn. Code Ann. § 65-5-207). A narrow focus on rates under price regulation should not be allowed to supersede these other statutory mandates.

In conclusion, upon reviewing the record in this matter, the Initial Order of the Hearing Officer, and BellSouth's Petition for Appeal, the Authority found that the Initial Order correctly finds and fully explains that the Authority has jurisdiction and control over the toll settlement arrangements between BellSouth and the independent companies. The Authority found that the findings and conclusions of the Hearing Officer were fully explained in the Initial Order, thereby

removing the objections of BellSouth as set forth in its Petition. Upon making these findings, the Directors voted unanimously to deny BellSouth's Petition and to uphold the Order.³²

IT IS THEREFORE ORDERED THAT:

1. BellSouth Telecommunications, Inc.'s Petition for Appeal is denied;
2. The Initial Order of the Hearing Officer, issued on December 29, 2000, and attached to this Order as Exhibit A, is hereby affirmed and adopted as if fully rewritten herein; and
3. BellSouth Telecommunications, Inc. shall comply with the provisions of the Initial Order enjoining BellSouth from taking any measures to unilaterally terminate the existing intraLATA toll settlements arrangement/mechanism currently in effect between BellSouth and the Rural Carriers.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

³² At the February 21, 2001 Authority Conference, counsel for BellSouth requested that the Authority hold BellSouth's Petition in abeyance so as not to interfere with ongoing negotiations among the parties to resolve the issue of the toll settlement arrangement. Counsel for the Coalition and counsel for Citizens, also present, concurred in this request.

In response, Director Malone reiterated that the Initial Order deals with a purely legal issue and that "[N]othing stated [t]herein should be construed to suggest that current efforts in developing or pursuing alternative interconnection compensation mechanisms should be relaxed." See *Initial Order*, pp. 12-13. Director Malone noted that the parties have had since December 29, 2000, the date of the Initial Order, if not well before that time, to negotiate. See *Transcript of Authority Conference, February 21, 2001*, pp. 26-28.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 29, 2000

IN RE:)
)
GENERIC DOCKET ADDRESSING) DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE)
)

INITIAL ORDER OF HEARING OFFICER

**FOR THE PURPOSE OF ADDRESSING THE AUTHORITY'S JURISDICTION OVER
INTRALATA TOLL SETTLEMENT AGREEMENTS BETWEEN BELL SOUTH
TELECOMMUNICATIONS, INC. AND INDEPENDENT INCUMBENT LOCAL
EXCHANGE CARRIERS**

This matter is before the Tennessee Regulatory Authority ("TRA" or "Authority") upon the action of the Hearing Officer, Director Melvin J. Malone, wherein the Hearing Officer requested the parties in this matter to submit legal briefs, inter alia, on the issue of whether the Authority has jurisdiction over the intraLATA toll settlement agreements between BellSouth Telecommunications, Inc. ("BellSouth") and the Rural Local Exchange Carriers ("Rural Carriers"). Legal briefs have been submitted.¹ After careful consideration, the Hearing Officer

¹ A Status Conference was convened in this matter on October 31, 2000, during which the parties were provided the opportunity to comment upon the formulation of the issues for which legal briefs were sought. *See Report and Recommendation of Pre-Hearing Officer*, TRA Docket No. 00-00523 (Nov. 8, 2000). BellSouth Telecommunications, Inc.; the Rural Independent Coalition; AT&T Communications of the South Central States, Inc. ("AT&T"); the Southeastern Competitive Carriers Association ("SECCA"); and the Attorney General filed legal briefs on this issue.



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concludes, as a matter of law, that the Authority has jurisdiction and authority over the intraLATA toll settlement arrangement/mechanism embodied within the agreements at issue.

I. INTRODUCTION

On June 20, 2000, the Authority voted unanimously to open a docket for the purpose of addressing Rural Universal Service.² The Authority's June 20, 2000, decision in this matter invited rural companies to file comments on the applicability of the decisions in *In Re Universal Service Proceeding*, TRA Docket No. 97-00888 to this docket. Additionally, the Directors requested that BellSouth notify the Authority of any future changes in the intraLATA toll settlements. On July 21, 2000, the Authority notified interested parties that initial comments in this docket were due on September 5, 2000, with reply comments due on September 19, 2000.

Pursuant to the Authority's Order opening this case, on June 26, 2000, BellSouth filed a letter with the Authority concerning *IntraLATA Toll Settlement Contracts* between BellSouth and the Rural Carriers ("Settlement Contracts").³ In the letter, BellSouth informed the agency that it was in the process of negotiating certain modifications to the current intraLATA toll compensation arrangements between BellSouth and the Rural Carriers. Further, BellSouth advised that the current Settlement Contracts contain provisions that permit either party to cancel the same with proper notice.

Again, on August 4, 2000, BellSouth submitted a letter to the Authority regarding the Settlement Contracts. Attached to this letter were copies of letters mailed from BellSouth to each rural carrier currently operating under a Settlement Contract with BellSouth. In the attached

² See *Order Opening Docket For Purpose Of Addressing Rural Universal Service And Appointing Hearing Officer*, TRA Docket No. 00-00523 (July 14, 2000).

³ The June 26, 2000, BellSouth letter shall be referred to hereinafter as the "June BellSouth Letter." The letter is properly filed in *In Re Generic Docket Addressing Rural Universal Service*, TRA Docket No. 00-00523.

letters, BellSouth advised the Rural Carriers that BellSouth, under the terms of the Settlement Contracts, will terminate the agreements effective December 31, 2000.⁴

Pursuant to the aforementioned July 21, 2000, Notice, the Rural Independent Coalition ("Coalition")⁵ filed comments on September 5, 2000. Among other things, in its comments the Coalition requested that the Authority "direct BellSouth to maintain the existing arrangements [set forth within the Settlement Contracts] between BellSouth and the Independents with respect to intraLATA toll until the matters before the Authority in this proceeding are resolved."⁶ In response to this request by the Coalition, in its Reply Comments BellSouth contended that the Settlement Contracts "were entered into outside of any regulatory proceeding, . . . are not subject to any specific standards or rules set by the Authority . . . and . . . have not been submitted in the past to the Authority for approval."⁷

Given the letters filed by BellSouth and the foregoing comments of the parties, at the October 31, 2000, Status Conference, the Hearing Officer determined that it was necessary to resolve the preliminary jurisdictional issue of whether the Authority has jurisdiction over the Settlement Contracts, also referred to as settlement agreements, in order to properly prepare this matter for a hearing on the merits before the Directors. Moreover, the time-sensitive nature of

⁴ The August 4, 2000, BellSouth letter, with attachments, is properly filed in *In Re Generic Docket Addressing Rural Universal Service*, TRA Docket No. 00-00523.

⁵ The Coalition consists of Ardmore Telephone Company, Inc., Ben Lomand Rural Telephone Cooperative, Inc., Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc., CenturyTel of Clairborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Concord Telephone Exchange, Inc., Crockett Telephone Company, Inc., Dekalb Telephone Cooperative, Inc., Highland Telephone Cooperative, Inc., Humphreys County Telephone Company, Loretto Telephone Company, Inc., North Central Telephone Cooperative, Inc., Peoples Telephone Company, Tellico Telephone Company, Inc., Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc., and Yorkville Telephone Cooperative.

⁶ *Comments of the Rural Independent Coalition*, TRA Docket No. 00-00523, pp. 29-30 (Sept. 5, 2000).

⁷ *Reply Comments of BellSouth*, TRA Docket No. 00-00523, p. 3 (Sept. 19, 2000). With respect to this issue, it should be noted that SECCA commented that "the TRA unquestionably has jurisdiction over the interLATA [sic] toll settlement contracts between BellSouth and the independent LECs." *Reply Comments of SECCA*, TRA Docket No. 00-00523, p. 2 (Sept. 22, 2000).

this issue coupled with the unsavory potential for interruption in intraLATA toll service of consumers served by Rural Carriers demand that this issue be resolved in a timely manner and in advance of the remaining issues in this docket.

II. BACKGROUND

Since divestiture, in 1984, the Rural Carriers have agreed to be compensated for intraLATA toll calls through participation in a toll settlement process managed by BellSouth.⁸ Historically, BellSouth has carried all 1+ and 0+ intraLATA toll traffic in the Rural Carriers' service territories. Consequently, BellSouth is, in effect, the intraLATA toll provider for the Rural Carriers' customers. Under this arrangement, each Rural Carrier collects traffic information and bills its customers for intraLATA toll calls at BellSouth's rates (Rural Carriers concurred with BellSouth's intraLATA toll tariffs).⁹ BellSouth then compensates Rural Carriers for billing and collecting intraLATA toll from Rural Carriers' end-users and for local switching and transport of intraLATA toll traffic. The amount of intraLATA toll revenue billed and collected from end-users¹⁰ was initially designed to be the equivalent of the Rural Carriers' compensation rates for billing and collecting and for local switching and transport, so as to achieve a zero net revenue impact as a result of the creation of the Revenue Distribution Fund ("RDF") managed by BellSouth. All carriers, including BellSouth, shared excess revenues, if any, proportionately based on access lines.

⁸ See *June BellSouth Letter*, TRA Docket No. 00-00523.

⁹ Rural Carriers, with the exception of Citizens, do not have intraLATA toll tariffs on file with the Authority that contain intraLATA toll rates (rural carriers' intraLATA toll tariffs refer to BellSouth's intraLATA rates). Instead, Rural Carriers have agreed that "their" customers will be billed at the rate(s) contained in BellSouth's intraLATA toll tariff.

¹⁰ These revenues are derived by applying BellSouth's tariffed toll rates in which the Rural Carriers concurred.

In the ensuing years, in instances where it was determined that BellSouth was earning in excess of its authorized rate of return,¹¹ the Tennessee Public Service Commission ("PSC") ordered BellSouth to, among other rate adjustments, reduce intraLATA toll rates. The PSC, based on its authority and jurisdiction over intraLATA toll settlement arrangements, which BellSouth did not challenge, and through its lawful regulatory directive, intentionally maintained the Rural Carriers' compensation levels.¹² This was achieved through the receipt of monthly net payments from BellSouth equal to the difference between intraLATA toll compensation levels before the PSC ordered reductions in BellSouth's intraLATA toll rates, and intraLATA toll compensation levels after the PSC ordered reductions.¹³

In the June BellSouth Letter, BellSouth stated that "[o]ver the last several years BellSouth has discussed with a number of the Independent LECs in Tennessee the need to revise the intraLATA toll compensation arrangement. Last December, during a formal meeting to discuss settlements in general, BellSouth stated to those companies that were in attendance that the current agreement is disproportionately burdensome and that BellSouth is evaluating it's [sic] options."¹⁴ BellSouth concluded its letter by stating that "[d]epending on the outcome of our

¹¹ BellSouth was then a rate-of-return regulated company; and, as such, was entitled to earn an authorized fair rate of return. BellSouth is, today, regulated under the state's price regulation statute, Tenn. Code Ann. § 65-5-209.

¹² Since Rural Carriers are, for the most part, rate-of return regulated, the PSC had at least two options available to it to maintain Rural Carriers' revenues at levels that existed prior to the ordered reduction in BellSouth's intraLATA toll rates. The first option would have been to allow corresponding reductions in Rural Carriers' compensation rates and then have each Rural Carrier file for rate relief, if warranted. Or, "make whole" payments could have been ordered that represented only a portion of the revenues that were found to be in excess of those revenues to which BellSouth was entitled. The PSC chose the latter. If it had not, the rate design, then established, could conceivably have included greater reductions in services then identified, or could have included reductions in other services not then targeted for reductions. The effect of the PSC's actions, with respect to ordered rate reductions, including intraLATA toll agreement "make whole payments," have carried forward today.

¹³ These payments have been interchangeably referred to as "make whole arrangements" and "make whole payments."

¹⁴ *June BellSouth Letter* at 2.

negotiations [with the independent LECs], BellSouth intends to move forward in Tennessee with a new contract in place no later than January 1, 2001.”¹⁵

As noted earlier, on July 14, 2000, the Authority issued an Order establishing a Rural Universal Service Docket, and requesting that BellSouth notify the Authority of any future changes in the intraLATA toll settlements. In response to the Authority’s request, BellSouth, on August 4, 2000, formally notified the Authority, in this docket, that it was, in fact, exercising its right to unilaterally terminate existing intraLATA toll settlement contracts (agreements) between itself and the Rural Carriers.¹⁶

III. SUMMARY OF ARGUMENTS OF THE PARTIES

a. Arguments of BellSouth

BellSouth explains its desire to terminate the existing agreements by stating “[t]his revised arrangement [modified RDF] was acceptable at that time because BellSouth’s earnings were protected under rate of return regulation and little to no intraLATA toll competition existed Competition has now arrived and accordingly, so has the need to revise the toll compensation arrangement, as Inter-exchange Carriers are competing head to head with BellSouth. Already all companies operating in Tennessee have implemented a toll dialing parity plan.”¹⁷

¹⁵ *Id.* at 3.

¹⁶ In its August 4, 2000, letter BellSouth stated that on July 31, 2000, “letters were mailed to all of the incumbent local exchange carriers in Tennessee, except Citizens Telecommunications which currently operates under an originating responsibility toll settlement contract.” Therein, BellSouth informed the Rural Carriers that “BellSouth herewith exercises this right of termination,” and that “BellSouth is agreeable to continue operating under the current agreement until the end of this year (December 31, 2000).”

¹⁷ *June BellSouth Letter* at 2. Section 251 (b) of the Telecommunications Act of 1996 requires all Local Exchange Carriers to provide dialing parity. *See also* 47 C.F.R. § 51.213; FCC Order 96-333 (Aug. 8, 1996) (setting forth the requirements for implementation of IntraLATA Toll Dialing Parity); and FCC Order 99-54 (March 23, 1999) (extending to June 22, 1999, the deadline for state commissions to act on a LEC’s IntraLATA Toll Dialing Parity Plan).

BellSouth basically offers four reasons in support of its ability to unilaterally terminate the existing agreements.¹⁸ First, BellSouth states that the agreements (contracts) at issue here, for the exchange of intraLATA toll traffic, have never been the subject of direct oversight by the Authority; and, furthermore, that the agreements were entered into outside the context of any regulatory proceeding, and, as such, are not governed by any specific standards or rules set by the Authority. Next, BellSouth argues that the agreements have not been submitted in the past to the Authority for approval. Finally, and most importantly, BellSouth agrees that the TRA has *jurisdiction* over the parties, but contends that the TRA has no statutory *authority* to alter pre-existing toll settlement agreements between BellSouth and the Rural Carriers. In fact, BellSouth is adamant in contending that the TRA possesses no “legal power to alter contracts between BellSouth and the rural carriers,” and that the TRA’s “jurisdictional oversight of public utilities set forth in Tenn. Code Ann. § 65-4-104 does nothing to create the ability to abrogate the requirements of (or rights arising from) pre-existing contracts.”¹⁹ BellSouth cites various authorities in support of its positions.

b. Arguments of the Coalition

The Coalition primarily argues that the Authority has jurisdiction over the toll settlement *arrangements*²⁰ that are embodied within the agreements entered into between BellSouth and the Rural Carriers, and requests that the Authority exercise its authority and jurisdiction over

¹⁸ See *Initial Brief of BellSouth Telecommunications, Inc. on Legal Issues*, TRA Docket No. 00-00523 (Nov. 9, 2000).

¹⁹ *Id.* at pp. 2, 4.

²⁰ To the extent that the Coalition’s language, in its Initial Brief, can be construed to suggest that the “agreements” are synonymous with the “arrangements” contained therein, its Reply Brief was clear and unambiguous. In it, the Coalition states: “The Coalition, however, does not ask the TRA to alter or take some other action on the toll settlement contracts themselves. . . . Instead, the Coalition is asking the TRA to act pursuant to its jurisdiction . . . over interconnection arrangements to define the interconnection arrangement between the Independents and BellSouth in the absence of the toll settlements contracts.” *Reply Brief of the Rural Independent Coalition*, TRA Docket No. 00-00523, p. 3 (Nov. 16, 2000).

intraLATA toll arrangements in a manner that would require the continuation of existing arrangements pending the consideration of the independents' universal service and rate design proposals in this proceeding.

c. Arguments of AT&T

AT&T basically asserts that the Authority's plenary jurisdiction over the rates and practices of all telephone companies existed and was exercised prior to the adoption of Chapter 408 of the Public Acts of 1995, and that the adoption of said chapter did not diminish or alter, in any manner, the Authority's jurisdiction with respect to Rural Carriers. In fact, AT&T asserts that Rural Carriers were exempted from the competitive reach of Chapter 408.

AT&T additionally contends that the TRA has limited authority over the rates of companies who elect to operate under a price regulation plan, and that existing law reveals nothing that would indicate an intent by the Legislature to include within the scope of a price regulation plan the intraLATA toll agreements then in effect between BellSouth and the independents. In fact, AT&T concludes that the arrangements between BellSouth and the Rural Carriers, ordered by the PSC, are beyond the boundaries of BellSouth's legal flexibility under a price regulation plan. Finally, AT&T asserts that as a consequence of the intraLATA toll arrangements between BellSouth and Rural Carriers being excluded from Tenn.Code Ann. § 65-5-209, the intraLATA toll arrangements remain subject to the general jurisdiction of the TRA, just as they were subject to the general jurisdiction of the PSC prior to the adoption of Chapter 408.

d. Arguments of SECCA

SECCA concurs with both the Coalition and AT&T in asserting that the Authority has jurisdiction over the intraLATA toll settlement arrangements.²¹

e. Arguments of the Attorney General

Finally, joining the Coalition, AT&T, and SECCA, the Attorney General unequivocally maintains that the Authority has jurisdiction over the the intraLATA toll settlement arrangements between BellSouth and the Rural Carriers. The Attorney General characterizes BellSouth's suggestions of a "retroactive raid" as "a red herring."²² Furthermore, the Attorney General asserts that "despite the reduction in state-wide average intraLATA toll rates and the implementation of Metro Area Calling, the toll settlements for the Rural Local Exchange Carriers remained basically in tact [sic]."²³ Lastly, the Attorney General states that "[a]fter BellSouth initiated the price regulation plan as stated in Tennessee Code Annotated § 65-5-209, the net toll settlement revenues are now explicitly included in the non-basic revenues of BellSouth. BellSouth's non-basic revenues are subject to the Price Regulation Index ("PRI") and the Service Price Index ("SPI") permitting a maximum annual adjustment in the rates for interconnection services. The maximum annual adjustment in the rates is subject to Authority review and approval according to statute."²⁴

²¹ "The TRA has 'general supervisory and regulatory power, jurisdiction and control over all public utilities, and also over their property, property rights, facilities, and franchises' T.C.A. § 65-4-104. The TRA also has explicit jurisdiction over 'interconnection' arrangements among 'all telecommunications service providers' in order to insure that the terms and conditions of interconnection are 'non-discriminatory' and 'reasonable.' T.C.A. § 65-4-124." *Brief of SECCA*, TRA Docket No. 00-00523, p. 1 (Nov. 9, 2000).

²² "The Coalition's request does not require the Authority to focus on 'pre-existing' contracts, but rather the contractual relationship after termination of the contract." *Brief of the Attorney General on the Legal Issues*, TRA Docket No. 00-00523, p. 1 (Nov. 16, 2000).

²³ *Id.* at 2. See also *Brief of SECCA*, TRA Docket No. 00-00523, pp. 1-2 (Nov. 9, 2000).

²⁴ *Brief of the Attorney General on the Legal Issues* at 2-3.

IV. ANALYSIS

In the opinion of the Hearing Officer, the legal question presented is not as complicated as it may on first glance appear. After compartmentalizing the components of the contracts (agreements) at issue here, there emerges, at least, two precise and well-defined categories. The first category is comprised of provisions agreed to by and between the parties themselves, absent regulatory influence or mandate. The second category is comprised of provisions that exist pursuant to regulatory edict and *must* be complied with until the TRA, consistent with state law, declares otherwise. The apparent controversy over the TRA's jurisdiction and authority results from the aforementioned contractual categories coexisting within the same document.

The Hearing Officer has not here resolved, as BellSouth suggests he must if its positions are not affirmed, that the Authority is herein exercising statutory authority over purely private contracts.²⁵ In the midst of BellSouth's focus on private contractual rights, the Hearing Officer concludes that, as a matter of law, the TRA's jurisdiction and authority over the toll settlement *arrangement* memorialized within the toll settlement agreements remains intact, notwithstanding BellSouth's actions terminating these agreements as of December 31, 2000.²⁶ Consistent with BellSouth's argument, the Hearing Officer recognizes that the contracts that exist between the Rural Carriers and BellSouth may contain a host of provisions agreed to by the principals apart from any requirement emanating from regulatory proceedings. Here, the Authority does not tread.

Conversely, where the contracts that exist between the Rural Carriers and BellSouth contain arrangements therein resulting directly from a lawful regulatory requirement, any action,

²⁵ In its legal brief, BellSouth does not dispute the Authority's jurisdiction and "legal power" over regulatory matters relating to public utilities.

²⁶ As concerning this legal issue, no genuine issues of material fact have been presented.

by either party, terminating said contracts does nothing to diminish or annul the TRA's authority and jurisdiction over regulatory ordered arrangements. The Authority's jurisdiction over lawfully ordered regulatory arrangements, in this instance toll settlement arrangements, must necessarily survive a contracting party's attempt to escape the grasp of those ordered arrangements by merely "penning in" a contractual right to terminate. No party, sua sponte, possesses the legal power to contract away a lawfully ordered regulatory requirement. By state law, that authority resides with the Authority.

As the Supreme Court of Tennessee articulated in *Consumer Advocate Division, Office of the Attorney General v. Greer*, 967 S.W.2d 759, 761-62 (Tenn. 1998), the Authority has broad regulatory authority over public utilities. The Court stated:

[T]he General Assembly has charged the TRA with the "general supervisory and regulatory power, jurisdiction and control over all public utilities." Tenn. Code Ann. § 65-4-104 (1997 Supp.). In fact, the Legislature has explicitly directed that the statutory provisions relating to the authority of the TRA shall be given "a liberal construction" and has mandated that "any doubts as to the existence of a power conferred on the [TRA] . . . shall be resolved in favor of the existence of the power, to the end that the [TRA] may effectively govern and control the public utilities placed under its jurisdiction. . . ." Tenn. Code Ann. § 65-4-106 (1997 Supp.). The General Assembly, therefore, has "signaled its clear intent to vest in the [TRA] practically plenary authority over the utilities within its jurisdiction." *Tennessee Cable Television Ass'n v. Tennessee Public Service Comm'n*, 844 S.W.2d 151, 159 (Tenn. App. 1992).²⁷

The Hearing Officer finds that the language set forth in *Greer* clearly supports, and in fact mandates, the conclusion reached herein.

The Hearing Officer's conclusion does not amount to "impairing" or "abrogating" existing contracts as BellSouth contends; rather, it affirms the agency's well-established statutory

²⁷ The TRA also derives its authority from the following sections: Tenn. Code Ann. §§ 65-4-105, 65-4-115, 65-4-124, and 65-5-201.

authority over a long-standing regulatory arrangement. BellSouth's suggestion that its unilateral election to terminate the intraLATA toll contracts with the Rural Carriers frees BellSouth from maintaining the currently ordered toll settlement *arrangement*, in or outside of a contractual agreement, or that its actions somehow strip the TRA of its clearly established jurisdiction over the arrangements lacks merit.

V. CONCLUSION

Based on the foregoing analysis, the Hearing Officer concludes that the TRA has jurisdiction and authority over the Settlement Contracts between BellSouth and the Rural Local Exchange Carriers to the extent that BellSouth must continue the interconnection *arrangement*²⁸ imposed as a result of past regulatory proceedings, until such time that the current arrangement is otherwise terminated, replaced, or modified by the Authority.

BellSouth may have acted within its contractual rights in unilaterally terminating its existing contracts as of December 31, 2000, and the Hearing Officer does not here take issue with the exercise of such rights. Still, BellSouth's power to unilaterally terminate its existing agreements does not, as a matter of law, empower BellSouth to escape its existing regulatory obligation with respect to maintaining interconnection arrangements with the Rural Carriers, nor does it empower BellSouth to unilaterally dismantle the existing intraLATA toll arrangement and replace it with an access-based compensation mechanism of its, or any other party's, choosing, absent TRA involvement.

Finally, nothing stated herein should be construed to suggest that current efforts in developing or pursuing alternative interconnection compensation mechanisms should be relaxed,

²⁸ The arrangement, outside of the existing contract, is ordered to be maintained on the same rates, terms, and conditions as were contained in the terminated intraLATA toll agreements.

or that this decision extends beyond resolving the immediate question of the TRA's jurisdiction and authority in this matter.

ACCORDINGLY, IT IS THEREFORE ORDERED THAT:

(1) Absent express action of the Authority, BellSouth Telecommunications, Inc. is hereby enjoined from taking any measures to unilaterally terminate the existing intraLATA toll settlement arrangement/mechanism currently in effect between BellSouth and the Rural Carriers;

(2) Any party aggrieved by this initial decision may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Initial Order. Such petition shall be considered by the Hearing Officer presiding herein;

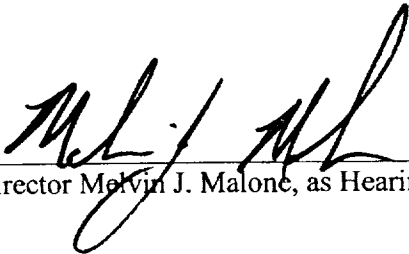
(3) Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for Appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Initial Order. Additionally, if the Tennessee Regulatory Authority or any of the parties herein do not seek review of this Initial Order within the time prescribed by Tenn. Code Ann. § 4-5-315, this Initial Order shall become the Final Order;

(4) Any party aggrieved by the decision of the Hearing Officer in this matter has the right to judicial review by filing a Petition for Review with the Tennessee Court of Appeals within sixty (60) days from and after the date of this Initial Order;

(5) Any time for the filing of a Petition for Review, Appeal, or Reconsideration of this Initial Order shall commence to run from the date of the entry of this Initial Order; and


(6) Pursuant to Tenn. Code Ann. § 4-5-318, this Initial Order shall become effective upon entry.

Entered this 29th day of December, 2000.



Director Melvin J. Malone, as Hearing Officer

ATTEST:



Executive Secretary